

MHTH170009392009

Regular Darkhast No.04/2009
Shri.Narayan Bhoir Vs. Smt.Laxmi Gharat and Ors.
Order below Exh.37
(Dated 14/08/2024)

This is an application filed by objectors/obstructionist Indu Bandya Bhoir and Hirubai Harishchandra Bhoir for staying the present execution proceeding.

2] It is asserted in the application that they have filed civil suit against Decree Holder and Judgment Debtor in the Court at Palghar for partition of the suit lands. They preferred appeal against the said Judgment as Regular Civil Appeal No.31/2016. Appeal is pending. Properties are same in the present suit and in that suit. Therefore, the present Darkhast needs to be stayed. Accordingly, they prayed for allowing this application and staying the present execution proceeding.

3] Judgment Debtors have not given say to this application.

4] Decree Holder has given detailed say at Exh.45 and resisted to this application. It has been submitted that the suit under present execution was filed in the year 2000 as Regular Civil Suit No.07/2020. It was decreed and Regular Appeal No.52/2004 was dismissed, which was preferred by the Judgment Debtors. It has further submitted that one Regular Civil Suit No.100/2010 was filed by the objectors/obstructionist, which was dismissed vide Order dated 23/02/2016 and Regular

Civil Appeal No.31/2016 is pending before the Appellate Court. Both suits are different and appeal is not pending in respect of the present suit i.e. Regular Civil Suit No.07/2000. Therefore, he prayed for rejection of this application.

5] Heard for decree holder. Nobody present for objectors/obstructionist and for judgement debtor. Perused application and say given by Decree Holder and record.

6] It is the matter of record that the present execution proceeding has been filed for execution of Judgment and Decree passed in Regular Civil Suit No.07/2000 and Regular Civil Appeal No.52/2004. Objectors/obstructionist have filed documents at list Exh.41. Document No.1 is the copy of Judgment and Decree passed on 04/04/2016 in Regular Civil Suit No.100/2010 and zerox copy of appeal. On perusal it shows that both obstructionists had filed the said civil suit against Dharma Laxman Gharat, Janardhan Laxman Gharat, Bhimabai Harishchandra Gharat, Vijaya Vijay Bhoir, Shankar Shanivar and Narayan Mundyha Bhoir. It also shows that the said suit was filed against the Decree Holder and Judgment Debtor namely Dharma, Janardhan, Bhimabai and Vijaya. It also shows that it was dismissed on 23/02/2016 and Civil Appeal No.31/2016 was preferred by the obstructionists against the defendants therein. But copy of Judgment and Decree passed in Regular Civil Suit No.7/2000 and copy of Judgment and Decree passed in Civil Appeal No.52/2004 which are produced by the Decree Holder at list Exh.3 shows that civil suit No.7/2020 was not filed against the objectors/obstructionists. It means that in this suit the applicants or obstructionists were not the parties. It also shows that this suit was decided on 29/06/2004. Therefore, it is

made clear that Regular Civil Suit No.100/2010 was filed by the obstructionists after the 6 years of the Judgment in the present suit. Nothing on record that Hon'ble Appellate Court has granted stay to this execution or to the enforcement of Judgment and Decree passed in this suit. No doubt, both suits are different and appeals are different. It has different entity. Merits of the both suits are different. Obstructionists are not the parties to the Civil Suit No.7/2000. Therefore, in my view, this Court has no jurisdiction to stay the present execution proceeding as prayed by the obstructionists. Therefore, application is liable to be rejected. Accordingly, I proceed to pass following order -

ORDER

1] Application Exh.37 is rejected.

Date :14/08/2024
Place : Palghar.

(Satish Y. Kadam)
Jt. Civil Judge Senior Division,
Palghar.